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No. 629

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

LOCAL 107, HIGHWAY TRUCK DRIVERS AND HELPERS UNION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner

v.

JOHN L. McCLELLAN, ET AL.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

EDWARD L. CAREY
WALTER E. GILCHRIST
Counsel for Petitioner
815 Fifteenth Street, N.W.
Washington 5, D.C.

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LOCAL 107, HIGHWAY TRUCK DRIVERS AND HELPERS UNION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner

v.

JOHN L. McCLELLAN, ET AL.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on December 22, 1958.

CITATIONS TO OPINIONS BELOW

The United States District Court in denying Petitioner's application for a temporary restraining order and motion for preliminary injunction did so, without opinion. No opinion has yet been rendered by the United States Court of Appeals on its decision.[1]

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[1] The reason for this unusual omission is probably due to the act that at the close of petitioner's rebuttal argument, petitioner

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 22, 1958. On the same date the Court (Judge Burger not present) denied petitioner's motion for an order staying the acts complained of pending the filing of a petition for writ of certiorari. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED

1. Whether the Senate Select Committee on Improper Activities in the Field of Labor and Management, an investigatory committee of the Senate of the United States, may authorize and permit the District Attorney of Philadelphia County, State of Pennsylvania, to examine, inspect and copy, records and documents belonging to a labor union local, which the said Committee has in its possession by virtue of its subpoena duces tecum and as to which records and documents the said Committee has theretofore admitted that it was finished with the use of said records and documents for the purpose for which they were subpoenaed.

2. Whether the United States District Court for the District of Columbia has the power to enjoin a congressional investigatory committee from doing an act, outside the scope of its constitutional functions and not in pursuit of any legislative function, which infringes on members of a union restricting their exercise of the constitutional right to freedom of assembly which rights cannot thereafter be asserted, and which may result in the loss of their

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requested the Court to stay the acts complained of pending the rendition of a decision by the Court. The Court then conferred at the bench and announced that the judgment of the District Court was affirmed. Questions posed by the Court at oral argument (hereinafter discussed) indicate the basis of the Court's ruling.

present position in collective bargaining both as to management and other competing labor unions and for which irreparable harm there is no adequate remedy at law.

STATEMENT

The facts involved in this case are not in dispute and are set forth in detail in the findings of fact by the United States District Court (App. 1). Briefly, petitioner is a labor union comprising more than fourteen thousand members having their principal office in Philadelphia, Pennsylvania. Defendants are members of the Senate of the Congress of the United States and comprise the Select Committee on Improper Activities in the Field of labor and Management.

In September 1957, the said Committee issued a subpoena duces tecum upon the Secretary-Treasurer of petitioner union. Records and documents requested by said subpoena were immediately furnished to the Committee.

In January, 1958, petitioner instituted action in the United States District Court for the District of Columbia for the return of the subpoenaed records. Jurisdiction in said Court was predicated on diversity of citizenship and the amount in controversy exceeding Three Thousand Dollars. The action was in the nature of mandamus. In May of 1958, petitioner filed an amended complaint alleging that the Committee was finished with the use of the records and documents for the purposes for which they were subpoenaed. A motion to dismiss filed by the Committee, predicated on failure to state a cause of action and lack of jurisdiction was denied. In September of 1958, the Committee filed its answer admitting all the essential elements of the Amended Complaint, including an admission that they were finished with the subpoenaed documents for the purposes for which they had been subpoenaed.

In December, 1958, the Chief Counsel for the Committee authorized the District Attorney for Philadelphia County, State of Pennsylvania to inspect, examine and copy the subpoenaed records. An application was immediately made to the District Court in the same action then pending for a temporary restraining order against both the Committee and its members, restraining them from authorizing or permitting the said District Attorney to examine, inspect and copy the subpoenaed records as aforesaid. Upon a full hearing the application was denied. On December 12, 1956 the motion for preliminary injunction came on to be heard and was also denied. (App. pg. 1). On December 18, 1958 the Court of Appeals affirmed the ruling of the District Court denying the motion for preliminary injunction.

On December 22, 1958, the United States Court of Appeals for the District of Columbia Circuit denied the Union's motion for an order staying the acts complained of pending the filing of a petition for writ of certiorari. Application for such an order was then made to Mr. Justice Brennan of this Court who after hearing in chambers received the Committee's agreement to continue the administrative stay, then in effect, until this Court could act upon petitioner's petition for a writ of certiorari. By agreement, the administrative stay will be continued until disposition of the cause, in the event this Honorable Court grants this petition for writ of certiorari.

REASONS FOR GRANTING THE WRIT

The courts of the District of Columbia circuit are unique in that the venue of actions by private individuals against the national legislature or its committees is laid within their boundaries. See *Fischler* v. *McCarthy*, 2nd Cir. 218 F. 2d 164. Thus problems inherent in these cases rarely, if ever, are passed upon by the federal courts in other circuits.

During the past decade, the scope of investigation by Congressional committees has been greatly enlarged. Respondents in the instant case are authorized to investigate improper activities in the field of labor and management. From an economic standpoint every employer and employee within this nation fall within the sphere of this Committee's investigative power. This Court can take judicial notice of the number of persons who have been affected, directly or indirectly, for better or worse by investigations already conducted by this Committee. But the legal issues raised in the instant cause are not confined to this particular committee but are applicable to all Congressional committees now in existence or henceforth to be created.

The rights and duties of Congressional committees with respect to records they subpoena has never been considered by a federal court. Petitioner has contended, by using the analogy of the grand jury subpoena, that once a Congressional committee has finished with the use of records which it has subpoenaed, it is incumbent upon it to forthwith return the subpoenaed records to the person from whom they were subpoenaed.[2]

If this Honorable Court does not grant this petition for a writ of certiorari, a decision of the United States Court of Appeals will be left standing, from which it can be concluded that Congressional committees are under no duty to return subpoenaed records to the subpoenaee when they are finished with them, but may turn them over to whomever it please.

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[2] *United States* v. *Wallace & Tiersan Co.*, 336 U.S. 793 (1949); *Traub* v. *United States*, 67 U.S. App. D.C. 220, 226 F. 2d 781; *Application of Bendix Aviation Corp.* 58 F. Supp. 953 (D.C. S.D. N.Y. 1945); *State of Kansas* v. *Smithmeyer*, 110 Kan. 172, 202 P. 638 (1921); *In Re Atlas Lathing Corp.*, 29 N.Y.S. 2d 458, 176 Misc. 959; 97 C.J.S. Sec. 25 p. 395; Cf. *Maryland & Virginia Milk Producers Ass'n Inc.* v. *United States*, 102 U.S. App. D.C. 100, 250 F. 2d 425 (1957).

If the acts complained of occur, irreparable harm will be inflicted upon Petitioner in the following manner. Petitioner's right to exercise on behalf of its members the constitutional right of freedom of association and right therein not to reveal the complete membership, past or present, of said association will be lost forever. By Respondents permitting the the District Attorney of Philadelphia County, State of Pennsylvania, to examine, inspect, and copy these records, disclosure of the membership of the union, past and present, cannot be avoided. This right of the union is absolute in view of the fact that there is no legitimate substantial action being performed by the said Committee which would conflict with this right. See *National Association for the Advancement of Colored People* v. *State of Alabama, ex rel Patterson*, 2 L. ed 2d 1486 (1958).

Furthermore, the unauthorized invasion of Petitioner's property right will result in disclosures which may have a substantial bearing on Appellant's position in collective bargaining with regard to management, and in their position in jurisdictional disputes with other labor unions. One disclosure to the said District Attorney may in turn lead to many more disclosures on his part, all to the irreparable harm of some fourteen thousand (14,000) individuals.[3]

At examination of pertinent case law and Article I, Sections one through ten of the Constitution of the United States leads to the conclusion that a Congressional committee has neither the express or implied power to authorize a state agency to examine, inspect and photostat records in the committee's possession, with which they are admittedly finished.

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[3] Among the records subpoenaed were minutes of all executive general and special membership meetings during the prior seven years.

Nor can such action by a Congressional committee be upheld on the theory that a committee has a right to inform one and all of possible corruption in places outside of the government.[4]

If the activity complained of in the instant case causing irreparable harm for which there is no adequate remedy at law, is outside the scope of the Committee's constitutional power, and not constituting an abuse of power while in pursuit of a legislative function, then the sole remedy of the judiciary in order to afford petitioner protection would be that of an injunction.

The application for the temporary restraining order and the motion for preliminary injunction specifically prayed for an injunction against the agents of the Committee. The basis for such relief is clearly set forth in *Hearst* v. *Black*, 66 App. D.C. 313, 67 F. 2d 68. There the Court stated that had the bill been filed before or while the trespass was taking place, the district court could have enjoined the agents of the committee. The only reason given by counsel for respondents in their brief before the Court of Appeals was that the agents were not made parties defendant in the action. However, the original action was not a suit for an injunction but one against the committee to compel return of subpoenaed documents. The application for the temporary restraining order and preliminary injunction was collateral to the main action and intended to last only until the records were returned to the petitioner. Therefore the Court having jurisdiction over the principal could bind the agents only, by injunction provided they were properly served or had actual notice of the order.

Because authorization and permission to the District Attorney could easily be communicated by members of the Committee itself, even though their agents were enjoined,

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[4] *Watkins* v. *United States*, 354 U.S. 178 (1957), at page 200, footnote 33.

it became necessary to ask the Court to enjoin the members of the Committee.

The Court of Appeals in affirming the decision of the District Court, denying the motion for preliminary injunction made it apparent by their questioning during oral argument that the judiciary had no authority to enjoin a legislative committee.

We submit that requests for injunctions in such cases may fall into one of three categories:

First: Where the activity complained of is within the constitutional scope of the legislature and while they are in pursuit of their legislative functions.

Second: Where the activity complained of constitutes an abuse of power but is done in pursuit of the legislative function.

Third: Where the activity complained of is outside the scope of legislative constitutional power and is not done in pursuit of a legislative function.

Examples of the first category are found in *State of Mississippi* v. *Johnson*, 71 U.S. 475, where the State of Mississippi sought to enjoin the President of the United States from executing and carrying out an Act of Congress alleged to be unconstitutional. The Court properly held that the carrying out of laws, good or bad, was the duty of the Executive Branch of the government, and when operating within his function, he could not be enjoined. The dicta contained in that case, which might indicate that the legislative could not be restrained in its action by the judiciary, must be read in connection with a later sentence which said, "But we are fully satisfied that this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties: . . ." (pg. 501). Similar instances of the first category are to be found in *New Orleans Waterworks Co.* v. *New Orleans*, 164 U.S. 471, and *Alpers* v. *San Francisco*, 32 F. 503.

Examples of the second category are found in *Hearst* v. *Black*, supra, and *Methodist Federation for Social Action* v. *Eastland*, 141 F. Supp. 729 (D.C.D.C. 3 Judge Court, one Judge dissenting).

The third category is exemplified by the type of case that *Youngstown Sheet & Tube* v. *Sawyer*, 343 U.S. 579 (1952) presented.

Your petitioner submits that the instant cause also is embraced within the third category.

It seems inconceivable that a federal court having jurisdiction over a congressional committee is limited in the exercise of its constitutional power by enforced omission of one of the weapons in its arsenal, the injunctive process. Such a conclusion as may now be drawn from the decision of the Court of Appeals in the instant case would seem to conflict with the responsibility placed upon the judiciary by the Constitution.[5]

Such a decision, on so important an aspect of our theory of government, should not be permitted to stand, unreviewed.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted

EDWARD L. CAREY
WALTER E. GILLCRIST
Counsel for Petitioner
815 Fifteenth Street, N.W.
Washington 5, D.C.

JANUARY 7, 1959.

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[5] *Watkins* v. *United States*, supra, at pgs. 198-199.

APPENDIX

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 168-58

LOCAL 107, HIGHWAY TRUCK DRIVERS AND HELPERS UNION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Plaintiff

v.

JOHN L. MCCLELLAN, et al.

Defendants

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case having come on for hearing on plaintiff's motion for preliminary injunction and defendants' opposition thereto, and the Court having heard argument thereon and having considered the pleadings, affidavits and exhibits filed herein, the Court this 15 day of December, 1958, makes the following findings of fact and conclusions of law:

Findings of Fact

1. The plaintiff is a labor union having its office and headquarters in Philadelphia, Pennsylvania.

2. The defendants are members of the Senate of the United States and comprise the Select Committee on Improper Activities in the Labor or Management Field of the Senate.

3. Pursuant to a subpoena *duces tecum* issued by the defendants, the plaintiff turned over the books, records and documents set forth in Exhibit A attached to the complaint.

4. On January 23, 1958, plaintiff filed the present complaint seeking the return of all the books and records which it had turned over to the defendants.

5. On May 24, 1958, an amended complaint was filed alleging that the defendants had completed their use of the subpoenaed books and records for the purpose for which they were subpoenaed.

6. On September 15, 1958, the defendants admitted in their answer that they had completed their use of the books and records for the purpose for which they were subpoenaed.

7. On September 25, 1958, Judge G. D. Welch of the United States District Court for the Eastern District of Pennsylvania, in the case of *United States of America, Russell C. Harrington, Commissioner of Internal Revenue,* Plaintiffs v. *Raymond Cohen, Local 107, Highway Truck Drivers and Helpers Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,* Civil Action 25264, issued an order enjoining the plaintiff Union from removing or causing to be removed from the defendant Committee the books and records here in issue until further order of that Court. An appeal is presently pending from that order. That order also directed that the Commissioner of Internal Revenue should have the authority and also granted the right to examine, inspect, copy and photograph the books and records here in issue.

8. On November 4, 1958, plaintiff moved for summary judgment in this action. Upon defendants' opposition, the Court, Pine, J., denied the motion for summary judgment on December 1, 1958. This denial was without prejudice as the Court had indicated that it considered the Committee to be required to maintain the records in its custody pursuant to the order of the United States District Court for the Eastern District of Pennsylvania in

which the Court directed that the present plaintiff not take any steps to remove the records from the Committee.

9. The defendant Committee early in December, 1958, authorized the District Attorney for Philadelphia County, Pennsylvania, to inspect and copy the books and records still in the possession of the defendants.

10. On December 4, 1958, plaintiff's application for a temporary restraining order was, upon defendants' opposition, denied by the Court, Pine, J.

11. The hearing on the preliminary injunction was held on December 12, 1958.

Conclusions of Law

1. A court of equity has no authority to enjoin a Senate Committee in the exercise of its legislative functions.

2. Legislative discretion in discharge of constitutional functions, whether rightfully or wrongfully exercised, is not a subject for judicial interference. *Hearst* v. *Black*, 66 App. D.C. 313, 87 F. 2d 68 (1936); *Methodist Federation for Social Action* v. *Eastland*, 141 F. Supp. 729 (D.C.D.C. 1956).

3. The preliminary injunction will be denied.

/s/

EDWARD A. TAMM,
United States District Judge

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In the Supreme Court of the United States

October Term, 1958

LOCAL 107, HIGHWAY TRUCK DRIVERS AND HELPERS UNION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER,

v.

JOHN L. MCCLELLAN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
GEORGE COCHRAN DOUB,
Assistant Attorney General,
SAMUEL D. SLADE,
JOHN G. LAUGHLIN, JR.,
Attorneys,
Department of Justice,
Washington 25, D. C.

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LOCAL 107, HIGHWAY TRUCK DRIVERS AND HELPERS UNION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER,

v.

JOHN L. MCCLELLAN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The United States District Court for the District of Columbia, which denied petitioner's motion for a preliminary injunction, rendered no opinion. The United States Court of Appeals for the District of Columbia Circuit, which affirmed the order of the District Court, rendered no opinion.

JURISDICTION

The order of the Court of Appeals, issued on December 18, 1958, was entered on December 22, 1958. The petition for a writ of certiorari was filed on January 7, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the District Court and the Court of Appeals were correct in refusing to enjoin the Senate Select Committee on Improper Activities in the Labor and Management Field (the McClellan Committee) from permitting the District Attorney of Philadelphia County, Pennsylvania, to examine, inspect and copy petitioner's records and documents in the possession of the Committee.[1]

STATEMENT

On December 4, 1958, petitioner moved for a temporary restraining order and preliminary injunction seeking to enjoin the Senate Select Committee on Improper Activities in the Labor and Management Field (the McClellan Committee) from permitting the District Attorney of Philadelphia County, Pennsylvania, to inspect books and records in the possession of the Committee. The District Court for the District of Columbia denied the motion for a preliminary injunction [2] on the

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[1] Predicated on the accelerated filing of the petition and brief in opposition (as approved by Mr. Justice Brennan on December 29, 1958), respondents have agreed to continue an administrative stay, in effect since December 4, 1958, pending disposition of the petition for a writ of certiorari and, if certiorari is granted, to a stay pending disposition of the case on certiorari.

[2] A temporary restraining order was denied on December 4, 1958, by Judge Pine, and the motion for a preliminary injunction was denied by Judge Tamm on December 15.

ground that the court could not interfere with members of Congress acting in the discharge of their constitutional functions. On appeal, the Court of Appeals for the District of Columbia Circuit (Judges Edgerton, Bastian and Burger) by order issued on December 18, 1958, and filed on December 22, 1958, affirmed, without opinion the order of the District Court. While the petition seeks review of the order of the Court of Appeals of December 22, 1958, there are ancillary proceedings which are pertinent to the case.

On January 23, 1958, petitioner commenced proceedings against the seven Committee members to compel the Committee to return all books and records subpoenaed by the Committee for purposes of Committee hearings. As subsequently amended, the petitioner's complaint alleged, *inter alia*, that the Committee had completed their use of petitioner's records and documents. A motion to dismiss, on behalf of the Committee, was denied on July 21, 1958, and the Committee answered on September 15, 1958, admitting, *inter alia*, that the Committee had completed its use of petitioner's records and documents.

On May 2, 1958, the Commissioner of Internal Revenue issued a summons to petitioner and its Secretary-Treasurer, Raymond Cohen, as authorized by law under the provisions of the Internal Revenue Code, requiring the production for examination of petitioner's books and records in the Committee's possession. To enforce this administrative summons, the Commissioner of Internal Revenue brought an action in the Eastern District of Pennsylvania, seeking judicial enforcement of the administrative summons. On September 25, 1958, District Judge Welch entered an order directing that the Internal Revenue Service should have the authority

to examine, inspect, copy and photograph the books and records of petitioner. It was further ordered that petitioner and its Secretary-Treasurer, Raymond Cohen, should not remove or cause to be removed the records and documents from the custody of the Senate Committee until further order of the court. The order of September 25, 1958, is pending on appeal to the Court of Appeals for the Third Circuit.

Petitioner then moved for summary judgment in the action commenced on January 23, 1958, on the ground that continuing retention of its books and records was beyond the rightful authority of the Senate Committee. This motion was denied without prejudice on December 2, 1958, by District Court Judge Pine, on the ground that an order requiring respondents to return petitioner's records might interfere with the outstanding order of the District Court for the Eastern District of Pennsylvania.

On December 4, 1958, petitioner initiated the proceedings which culminated in the order of December 18 and 22, 1958, now before this Court on petition for a writ of certiorari.

ARGUMENT

1. There is presently in effect an order of the District Court for the Eastern District of Pennsylvania which, until further order of the court, precludes petitioner from removing from the Committee's possession the books and records subpoenaed by the Committee. Since the Committee has completed its use of the records and documents, in absence of this court order, the records and documents would be or would have been forthwith returned to petitioner. The question of whether the Committee is acting properly in permitting the District Attorney for Philadelphia County to inspect peti-

tioner's records is, in part at least, a consequence of a court order being appealed to the Court of Appeals for the Third Circuit and not involved in the present litigation. The fact situation underlying the present case thus arises as a result of a unique set of circumstances, the question involved is not likely to recur, and therefore the case lacks the over-all importance essential to warrant this Court's review.

2. (a) Moreover, the decision of the court below is clearly correct. Two district judges and three judges of the Court of Appeals have held that a court has no authority, in effect, to direct by the injunctive process a duly constituted Committee of the United States Senate [3] in the use and disposition of investigatory material which validly is in the Committee's possession.

Petitioner, in arguing to the contrary, understandably offers no authority for its position, requiring, as it does, a novel and substantial inroad upon the fundamental constitutional doctrine of separation of powers. The authority is, of course, all the other way. "[T]he general rule is that legislative action cannot be interfered with by injunction" [4] and in an unbroken line of authority courts have respected the rule.[5] *Hearst* v.

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[3] S. Res. 74, January 30, 1957, 85th Cong., 1st Sess., as amended by S. Res. 88, February 7, 1957, 85th Cong., 1st Sess.; S. Res. 221, January 29, 1958, 85th Cong., 2d Sess. In absence of Senate action in the current sesssion of Congress, the Committee will cease to exist on January 31, 1959 (S. Res. 221, *supra*).

[4] *McChord* v. *Louisville & Nashville R'd Co.*, 183 U.S. 483, 495.

[5] "* * * The prayer of the bill is that the committee be restrained from keeping the messages or making any use of them or disclosing their contents. In other words, that if we find that the method adopted to obtain the telegrams was an invasion of appellant's legal rights, we should say to the committee and to the Senate that the contents could not be disclosed or used in the exercise by the Senate of its legitimate functions. We know of

Black, 87 F. 2d 68 (C.A.D.C.); *Methodist Federation for Social Action* v. *Eastland*, 141 F. Supp. 729, three-judge court (D.D.C.); *Fischler* v. *McCarthy*, 117 F. Supp. 643 (S.D.N.Y.), affirmed, 218 F. 2d 164 (C.A. 2); *Mins* v. *McCarthy*, 209 F. 2d 307 (C.A.D.C.); *Kilbourn* v. *Thompson*, 103 U.S. 168; *State of Mississippi* v. *Johnson*, 4 Wall. 475; cf. *Lanza* v. *N.Y.S. Joint Legis. Comm.*, 3 N.Y. 2d 92.

(b) To avoid the impact of this settled judicial doctrine, petitioner suggests that, because the Committee's purpose in subpoenaing petitioner's records and documents has been served, the Committee is exceeding legislative bounds and its constitutional power if it permits a state law enforcement authority to examine the records and documents. For this reason, it is said, a court may properly interfere. The argument is without merit.

From the earliest times in its history, the Congress has performed an "informing function" of the kind petitioner apparently fears and asks a court to enjoin. See Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 168-194; see also: *Hearst* v. *Black*, *supra*; *Methodist Federation for Social Action* v. *Eastland*, *supra*. Many have believed that the informing function of Congress

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no case in which it has been held that a court of equity has authority to do any of these things. On the contrary, the universal rule so far as we know it, is that the legislative discretion in discharge of its constitutional functions, whether rightfully or wrongfully exercised, is not a subject for judicial interference.

"The Constitution has lodged the legislative power exclusively in the Congress. If a court could say to the Congress that it could use or could not use information in its possession, the independence of the Legislature would be destroyed and the constitutional separation of the powers of government invaded. * * *." *Hearst* v. *Black*, 87 F. 2d 68, 71-72

is second only to its direct legislative function. In a word, petitioner pitches its case on an unduly narrow view of a vital function of the legislative branch of the Government.

The Committee, in its investigation of petitioner, is clearly acting within the terms of its charter[6] which directs that the Committee "conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations * * *." If the Committee, in the course of its investigation, has uncovered evidence of violations of law, its obligation to apprise the proper authorities is no less than the same obligation which rests upon a private citizen. The contemplated informative action by the Committee, of which petitioner complains, is in these circumstances no more an appropriate subject of judicial complaint than would be the reproduction of petitioner's records in the reports to the Senate to be rendered by the Committee,[7] and no more a proper subject for injunctive relief than would have been the public hearings conducted by the Committee. See, *Hearings, Select Committee on Improper Activities in the Labor or Management Field*, 85th Cong., 1st and 2d Sess., Pts. 27, 28.

(c) In the district court, petitioner acknowledged that "There is a way for these books to be secured [by the State] and these people [the Committee] aren't doing it in the proper fashion. We are trying to make them do it in a proper fashion." (Transcript, December 4, 1958, pp. 4-5). It is not, of course, a function

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[6] *Supra*, n. 3, p. 5.

[7] *Hearst* v. *Black*, *supra*, at p. 71; *Methodist Federation for Social Action* v. *Eastland*, *supra*.

of the courts to police the activities of Committees of Congress by the injunctive process. And petitioner's forebodings of irreparable harm (Pet. 6-7) that will allegedly flow from the Committee's action rest only upon the assumption that the District Attorney will use the information gleaned from the records for a purpose other than matters that are a legitimate concern of his office. The assumption is without record foundation or evidentiary support. In the absence of a more substantial showing of irreparable harm, even if conventional equitable principles were applicable, the courts below were, for this additional reason, clearly correct in denying injunctive relief.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
SAMUEL D. SLADE,
JOHN G. LAUGHLIN, JR.,
Attorneys.

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